

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IRIS OCASIO	:	CIVIL ACTION
	:	
v.	:	
	:	
OCWEN LOAN SERVICING, LLC,	:	
et al.	:	NO. 07-5410

MEMORANDUM

Bartle, C.J.

August 28, 2008

Plaintiff Iris Ocasio ("Ocasio") brings this action in which she alleges that she was a victim of predatory practices in connection with a residential mortgage loan. Now pending before the court is the motion of Ocasio to file a Third Amended Complaint.

Ocasio filed her original complaint on December 24, 2007 against defendants Ocwen Loan Servicing, LLC ("Ocwen"), American Business Credit, Inc. and American Business Credit Corporation. In response to a motion of Ocwen to dismiss, Ocasio filed an Amended Complaint on February 28, 2008. After Ocwen again moved to dismiss, Ocasio sought leave of court to file a Second Amended Complaint. We granted her request and the Second Amended Complaint was filed on April 16, 2008. The Second Amended Complaint also named defendant the Bank of New York ("BONY"). Ocwen and BONY filed a third motion to dismiss, seeking to dismiss nine of the fourteen counts pending against them under Rules 12(b)(6) and 9(b) of the Federal Rules of Civil

Procedure. We granted the motion and dismissed certain counts of the Second Amended Complaint on July 23, 2008. On August 19, 2008, Ocasio filed the present motion seeking to file a Third Amended Complaint. In her memorandum in support of her motion, Ocasio argues that the court incorrectly dismissed some of the claims of the Second Amended Complaint and that the court's July 23, 2008 Memorandum and Order "create[] a roadmap" for her to cure the remainder of her dismissed causes of action.

To the extent that Ocasio implicitly seeks reconsideration of this court's July 23, 2008 Order, her motion will be denied. Rule 7.1(g) of the Local Rules of Civil Procedure provides that a request for reconsideration "shall be served and filed within ten (10) days after the entry of the ... order ... concerned." As Ocasio's motion was not filed until August 19, it is untimely. Moreover, she does not address the proper standard for reconsideration and we find that it has not been met. Gateco v. Safeco Ins. Co., 2005 U.S. Dist. LEXIS 29542 at \*2, No. 05-2869, (E.D. Pa. Oct. 28, 2005) (citing Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999)).

We will also deny Ocasio's motion insofar as she seeks to file a Third Amended Complaint. The Supreme Court has held that although "the grant or denial of an opportunity to amend is within the discretion of the District Court, ... outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of that discretion." Foman v.

Davis, 371 U.S. 178, 182; In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). "Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility." In re Burlington Coat, 114 F.3d at 1434. This is the case whether the complaint is dismissed for failure to state a claim or failure to plead a claim with particularity. Id.; Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

Here, permitting Ocasio to take a fourth bite at the pleading apple would result in undue delay and prejudice to the defendants. Despite being filed more than eight months ago, the matter remains only at the pleading stage. Defendants have already had to defend against three complaints in this matter and each of Ocasio's prior amended complaints has been made in response to a motion to dismiss which alerted her to the precise deficiencies found by the court in its July 23, 2008 Memorandum and Order. Additionally, plaintiff has not provided a proposed Third Amended Complaint with her motion and has not given any indication that she would be able to cure the deficiencies identified in the previously dismissed counts of her Second Amended Complaint. Under the circumstances, her motion to file a Third Amended Complaint will be denied.

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ORDER

AND NOW, this 28th day of August, 2008, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of plaintiff Iris Ocasio to file a Third Amended Complaint (Doc. No. 36) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

C.J.